

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**GREGORY WAYNE SMITH,**

**Petitioner,**

**v.**

**Civil Action No. 2:04CV53  
Criminal Action No. 2:01CR15  
(Judge Maxwell)**

**UNITED STATES OF AMERICA,**

**Respondent.**

**ORDER**

It will be recalled that on September 16, 2005, Magistrate Judge Kaull filed his Report and Recommendation, wherein the Petitioner was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his motion, which was filed pursuant to 28 U.S.C. §2255, wherein Petitioner seeks to have his sentence vacated, set aside or corrected, were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

**ORDERED** that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Petitioner's §2255 Motion be, and the same hereby is, **DENIED**. It is further

**ORDERED** that the Petitioner's Motion for Default Judgment, Motion for Appointment of Counsel, and his request for an evidentiary hearing are all also **DENIED**, as more fully set forth in Magistrate Judge Kaul's Report and Recommendation. It is further

**ORDERED** that the above styled action be, and the same hereby is, **DISMISSED** and **STRICKEN** from the docket of this Court. It is further

**ORDERED** that, if Petitioner should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$250.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

**ENTER:** November 9<sup>th</sup>, 2005

/s/ Robert E. Maxwell  
United States District Judge